

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MARTIN RAUL SOTO-FONG,
Petitioner.

No. 2 CA-CR 2018-0181-PR
Filed November 9, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR039599
The Honorable Peter W. Hochuli, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Arizona Capital Representation Project, Tucson
By Amy Armstrong, Director/Staff Counsel
and Sam Kooistra, Staff Counsel
Counsel for Petitioner

STATE v. SOTO-FONG
Decision of the Court

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Vásquez and Judge Eppich concurred.

ESPINOSA, Judge:

¶1 Martin Soto-Fong seeks review of the trial court’s ruling denying his petition for post-conviction relief claiming *Miller v. Alabama*, 567 U.S. 460 (2012), constitutes a significant change in the law applicable to his sentences. *See* Ariz. R. Crim. P. 32.1(g). We grant review but deny relief.

¶2 After a jury trial, Soto-Fong was convicted of three counts of first-degree murder, two counts of attempted armed robbery, two counts of attempted aggravated robbery, and one count each of armed and aggravated robbery. He was sentenced to death for the murders and to concurrent and consecutive prison terms for the remaining convictions. Our supreme court affirmed his convictions and sentences on appeal. *State v. Soto-Fong*, 187 Ariz. 186, 211 (1996). Because Soto-Fong was seventeen years old at the time of his crimes, *id.* at 209, his death sentences were subsequently vacated pursuant to *Roper v. Simmons*, 543 U.S. 551 (2006), and the trial court, without altering the sentences for his other offenses, resentenced him to consecutive life terms for the murders, each without the possibility of release for twenty-five years. We affirmed those sentences on appeal. *State v. Soto-Fong*, Nos. 2 CA-CR 2006-0091, 2006-0056-PR, ¶ 30 (Ariz. App. May 3, 2007) (consol. mem. decision). Soto-Fong has previously sought and been denied post-conviction relief several times, and this court has denied relief on review. *State v. Soto-Fong*, 2009-0294-PR (Ariz. App. Mar. 25, 2010) (mem. decision); *Soto-Fong*, Nos. 2 CA-CR 2006-0091, 2006-0056-PR.

¶3 In his most-recent post-conviction proceeding, initiated in 2013, Soto-Fong argued that, because he will not be eligible for parole on his aggregate sentences until he has served 109 years of imprisonment, he is entitled to a determination pursuant to *Miller* and *State v. Valencia*, 241 Ariz. 206 (2016), whether his crimes reflected “irreparable corruption” or mere “transient immaturity,” due to his age at the time of his offenses, thus rendering his sentences unconstitutional. *See Valencia*, 241 Ariz. 206, ¶ 18. The trial court denied relief, and Soto-Fong has filed a petition for review reurging his claim.

STATE v. SOTO-FONG
Decision of the Court

¶4 This court recently resolved the issue presented here in *State v. Helm*, No. 2 CA-CV 2018-0062-PR, 2018 WL 5629872 (Ariz. Ct. App. Oct. 31, 2018). Noting that *Miller* “did not address consecutive sentences” and relying on *State v. Berger*, 212 Ariz. 473 (2006) and *State v. Kasic*, 228 Ariz. 228 (App. 2011), we concluded *Miller* “does not apply to Helm’s aggregate prison term” and, thus, he was not entitled to post-conviction relief under Rule 32.1(g). *Helm*, 2018 WL 5629872, ¶¶ 8-9. The same reasoning applies here and, thus, the trial court correctly denied Soto-Fong’s petition for post-conviction relief.

¶5 Although we grant review, relief is denied.